Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States
OCTOBER TERM, 2005

WILLIE J. HORTON, JR.,

Petitioner,

v.

JUDGE JAMES AHLER, et al.

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit
28 U.S.C. §2101(c)

PETITION FOR A WRIT OF CERTIORARI

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COMMISSION ON PROFESSIONAL COMPETENCE, SAN DIEGO COUNTY, EDWARD LOPEZ, SUE BRAUN, JOHN DE BECK, RON OTTINGER, FRANCES ZIMMERMAN, ALAN BERSIN, TERRANCE SMITH, KMIKO FUKUDA, MARY HOPPER, KATHERINE COFFARO, JAIME BUENSUCESCO, DEBERIE GOMEZ, TONY ALVARADO, SAN DIEGO UNIFIED SCHOOL DISTRICT

QUESTIONS PRESENTED

1. Whether a California statute, the Administrative Procedure Act (APA) Gov. Code section11524 protects a citizen's due process rights and property rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution, Title VII Racial Discrimination Claims:

a. where Congress has specified the remedies a party must exhaust as a jurisdictional prerequisite to judicial review of a class of agency actions; and

b. where the administrative agency decided by rule to make an inter-agency review process mandatory?

2. Can an administrative agency violate a party's equal protection clause of the Fourteenth

Amendment and Fifth Amendment to the United States Constitution by litigating the same party for the same cause of action:

a. where there has been a prior decision in favor of the Respondent; and

b. the agency had not requested reconsideration or an appeal by filing a petition for mandamus mandated by the California APA Gov. Code section 11524?

3. Has Respondent received due process under the Fifth Amendment of the United States Constitution due process rights of law when Respondent timely file a Title VII racial discrimination charge; and where:

a. the administrative agency and the school district denied the Respondent's application for reconsideration, and made a ruling without holding

a hearing to which the Respondent was entitled in accordance with California APA Gov. Code section 11517;

4. Were Petitioner's Constitutional rights violated according to due process clause and the equal protection clause of the Fifth and Fourteenth Amendments where:

a. the school district did not appeal the first administrative ruling, and refiled the same charges violating the APA Gov. Code section 11524; and

5. Did the Ninth Circuit Court of Appeal err in its review *de novo* of the District Court's dismissal based on *res judicata* where:

a. the second administrative law judge did not have jurisdiction to rehear the same charges and issues under the same case number that the first

administrative law judge dismissed between the parties;

b. the first administrative proceeding was not reviewed nor did the school district appeal the ruling, therefore rendering the first administrative proceeding *res judicata*; and

c. did the first administrative proceeding preclude racial discrimination claims protected under Title VII?

d. as a corollary to the above federal questions of law, did the Appellate Court properly hold that Respondent received due process where the above-described factors existed and where other Appellate Courts have ruled differently in similar cases?

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PETITION FOR WRIT OF CERTIORARI

Willie J. Horton, Jr. respectfully petitions for a Writ of Certiorari to review the Judgment of the Ninth Circuit Court of Appeals in this case.

OPINIONS BELOW

The decision of the Court of Appeals denying rehearing (Appendix A). The decision of the Court of Appeals on the merits as found in Appendix A. The decision of the District Court addressing the exhaustion of administrative remedies issue is unreported.

JURISDICTION ON CERTIORARI

On August 4, 2005, the Ninth Circuit Court of Appeals denied the rehearing *en banc* and the petition for rehearing by the panel. *See* Ninth Circuit Rule 34A(4). The jurisdiction of this Court is

invoked under U.S.C. section1254(1) (Appendix A). The notice of appeal was filed in the District Court on August 23, 2005 (Appendix A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment due process clause, to life, liberty and the pursuit of happiness and the equal protection clause under the Fourteenth Amendment protects property rights.

The exhaustion of administrative remedies is settled law by Title V of the U.S. Code APA section 704, which allows an agency to decide by rule whether to make an intra-agency review process mandatory or permissive. If an agency makes the review process mandatory, a petitioner must exhaust it as a prerequisite for judicial review under the